

Introduced by Senators Benoit and Runner

February 23, 2009

An act to amend Sections 17202.1, 17207, 17209, 17323, and 17405 of, and to repeal Section 17210 of, the Financial Code, relating to escrow agents.

LEGISLATIVE COUNSEL'S DIGEST

SB 204, as introduced, Benoit. Escrow agents.

Existing law provides for the licensing and regulation of escrow agents by the Commissioner of Corporations. Existing law, until January 1, 2010, requires each escrow agent to pay an annual license fee of up to \$2,800 for each office or location and authorizes the commissioner to additionally levy a special assessment for each office or location in certain circumstances. Commencing January 1, 2010, existing law instead requires each escrow agent to pay to the commissioner the agent's pro rata share of the commissioner's annual administrative costs and expenses, as specified.

This bill would delay the change in these fee requirements to January 1, 2016, and would, until that date, lower the maximum amount of the annual license fee to \$2,500 for each office or location.

Existing law requires that escrow agents maintain a specified tangible net worth, including certain liquid assets.

This bill would eliminate that requirement, and make related changes.

Existing law requires the commissioner to examine an escrow agent as often as the commissioner deems necessary, based on factors designated by the commissioner by rule or order, but not less than every 48 months. Existing law also authorizes the commissioner to conduct examinations, as specified, of a new licensee within one year and within 2 years of the issuance of a license.

This bill would authorize the commissioner to examine an escrow agent only for cause and would require the commissioner to conduct the examinations, as specified, of new licensees.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17202.1 of the Financial Code is amended
2 to read:

3 17202.1. An applicant for an escrow agent's license or a
4 licensee may, in lieu of and subject to the same conditions as the
5 bond required by Section 17202, deposit with the commissioner
6 a cash bond in the sum specified in Section 17202. Evidence of
7 the cash bond shall be a deposit in the amount specified in Section
8 17202 in a bank or investment certificates of industrial loan
9 companies, authorized to do business in this state and insured by
10 the Federal Deposit Insurance Corporation, or an investment
11 certificate or share account in the amount specified in Section
12 17202 issued by a savings and loan association doing business in
13 this state and insured by the Federal Savings and Loan Insurance
14 Corporation. Those deposits, certificates, or accounts shall be
15 assigned to and accepted and maintained by the commissioner,
16 upon those terms as the commissioner may prescribe, until released
17 by the commissioner, ~~and shall not be deemed an asset of the~~
18 ~~applicant or licensee for the purpose of complying with Section~~
19 ~~17210.~~

20 SEC. 2. Section 17207 of the Financial Code, as amended by
21 Section 1 of Chapter 257 of the Statutes of 2005, is amended to
22 read:

23 17207. The commissioner shall charge and collect the following
24 fees and assessments:

25 (a) For filing an application for an escrow agent's license, six
26 hundred twenty-five dollars (\$625) for the first office or location
27 and four hundred twenty-five dollars (\$425) for each additional
28 office or location.

29 (b) For filing an application for a duplicate of an escrow agent's
30 license lost, stolen, or destroyed, or for replacement, upon a
31 satisfactory showing of the loss, theft, destruction, or surrender of
32 certificate for replacement, two dollars (\$2).

1 (c) For investigation services in connection with each
2 application, one hundred dollars (\$100), and for investigation
3 services in connection with each additional office application, one
4 hundred dollars (\$100).

5 (d) For holding a hearing in connection with the application, as
6 set forth under Section 17209.2, the actual costs experienced in
7 each particular instance.

8 (e) (1) Each escrow agent shall pay to the commissioner for
9 the support of this division for the ensuing year an annual license
10 fee not to exceed two thousand ~~eight~~ *five* hundred dollars ~~(\$2,800)~~
11 ~~(\$2,500)~~ for each office or location.

12 (2) On or before May 30 in each year, the commissioner shall
13 notify each escrow agent by mail of the amount of the annual
14 license fee levied against it, and that the payment of the invoice
15 is payable by the escrow agent within 30 days after receipt of
16 notification by the commissioner.

17 (3) If payment is not made within 30 days, the commissioner
18 may assess and collect a penalty, in addition to the annual license
19 fee, of 10 percent of the fee for each month or part of a month that
20 the payment is delayed or withheld.

21 (4) If an escrow agent fails to pay the amount due on or before
22 the June 30 following the day upon which payment is due, the
23 commissioner may by order summarily suspend or revoke the
24 certificate issued to the company.

25 (5) If, after an order is made pursuant to paragraph (4), a request
26 for a hearing is filed in writing and a hearing is not held within 60
27 days thereafter, the order is deemed rescinded as of its effective
28 date. During any period when its certificate is revoked or
29 suspended, a company shall not conduct business pursuant to this
30 division, except as may be permitted by order of the commissioner.
31 However, the revocation, suspension, or surrender of a certificate
32 shall not affect the powers of the commissioner as provided in this
33 division.

34 (f) Fifty dollars (\$50) for investigation services in connection
35 with each application for qualification of any person under Section
36 17200.8, other than investigation services under subdivision (c)
37 of this section.

38 (g) A fee not to exceed twenty-five dollars (\$25) for the filing
39 of a notice or report required by rules adopted pursuant to
40 subdivision (a) or Section 17203.1.

(h) (1) If costs and expenses associated with the enforcement of this division, including overhead, are or will be incurred by the commissioner during the year for which the annual license fee is levied, and that will or could result in the commissioner's incurring of costs and expenses, including overhead, in excess of the costs and expenses, including overhead, budgeted for expenditure for the year in which the annual license fee is levied, then the commissioner may levy a special assessment on each escrow agent for each office or location in an amount estimated to pay for the actual costs and expenses associated with the enforcement of this division, including overhead, in an amount not to exceed five hundred dollars (\$500) for each office or location. The commissioner shall notify each escrow agent by mail of the amount of the special assessment levied against it, and that payment of the special assessment is payable by the escrow agent within 30 days of receipt of notification by the commissioner. The funds received from the special assessment shall be deposited into the State Corporations Fund and shall be used only for the purposes for which the special assessment is made.

(2) If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the special assessment, of 10 percent of the special assessment for each month or part of a month that the payment is delayed or withheld. If an escrow agent fails to pay the special assessment on or before 30 days following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company. If an order is made under this subdivision, the provisions of paragraph (5) of subdivision (e) of this section shall apply.

(3) If the amount collected pursuant to this subdivision exceeds the actual costs and expenses, including overhead, incurred in the administration and enforcement of this division and any deficit incurred, the excess shall be credited to each escrow agent on a pro rata basis.

(i) This section shall remain in effect only until January 1, ~~2010~~ 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 3. Section 17207 of the Financial Code, as amended by Section 2 of Chapter 257 of the Statutes of 2005, is amended to read:

1 17207. The commissioner shall charge and collect the following
2 fees and assessments:

3 (a) For filing an application for an escrow agent's license, six
4 hundred twenty-five dollars (\$625) for the first office or location
5 and four hundred twenty-five dollars (\$425) for each additional
6 office or location.

7 (b) For filing an application for a duplicate of an escrow agent's
8 license lost, stolen, or destroyed, or for replacement, upon a
9 satisfactory showing of the loss, theft, destruction, or surrender of
10 certificate for replacement, two dollars (\$2).

11 (c) For investigation services in connection with each
12 application, one hundred dollars (\$100), and for investigation
13 services in connection with each additional office application, one
14 hundred dollars (\$100).

15 (d) For holding a hearing in connection with the application, as
16 set forth under Section 17209.2, the actual costs experienced in
17 each particular instance.

18 (e) (1) Each escrow agent shall pay to the commissioner its pro
19 rata share of all costs and expenses reasonably incurred in the
20 administration of this division, as estimated by the commissioner
21 for the ensuing year, and of any deficit actually incurred or
22 anticipated in the administration of this division in the year in
23 which the assessment is made. Commencing with the assessment
24 for fiscal year ~~2010-11~~ 2016-17, the assessment shall not increase
25 by more than 25 percent over the amount assessed in the prior
26 year. The pro rata share shall be the proportion which a licensee's
27 gross income from escrow operations bears to the aggregate gross
28 income from escrow operations of all licensees as compiled by the
29 commissioner. The pro rata share shall not include the costs of any
30 examinations provided for in Section 17405.1, unless they cannot
31 be collected from the company examined. If the pro rata assessment
32 collected pursuant to this paragraph exceeds the actual costs and
33 expenses incurred in the administration of this division and any
34 deficit incurred, the excess shall be credited to each escrow agent
35 on a pro rata basis.

36 (2) On or before May 30 in each year, the commissioner shall
37 notify each escrow agent by mail of the amount assessed and levied
38 against it, and that the payment of any invoice for assessments of
39 the commissioner is payable by the escrow agent in three
40 installments with the first installment payable within 20 days after

1 receipt of notification by the commissioner and the second and
2 third installments payable within 20 days of August 31 and
3 November 30, respectively, in each year. The first installment
4 payment shall be 50 percent of the amount assessed, and the second
5 and third installment payments shall each be 25 percent of the
6 amount assessed.

7 (A) If the first installment payment is not made within 20 days,
8 the commissioner may assess and collect a penalty, in addition to
9 the assessment, of 10 percent of the assessment for each month or
10 part of a month that the payment is delayed or withheld.

11 (B) If the second installment payment is not made within 20
12 days of August 31 in each year, the commissioner may assess and
13 collect a penalty, in addition to the assessment, of 10 percent of
14 the assessment for each month or part of a month that the payment
15 is delayed or withheld.

16 (C) If the third installment payment is not made within 20 days
17 of November 30 in each year, the commissioner may assess and
18 collect a penalty, in addition to the assessment, of 10 percent of
19 the assessment for each month or part of a month that the payment
20 is delayed or withheld.

21 (3) In the levying and collection of the assessment, an escrow
22 agent shall not be assessed for, nor be permitted to pay less than,
23 three hundred fifty dollars (\$350) per year, per location.

24 (4) (A) If an escrow agent fails to pay the first assessment on
25 or before the June 30 following the day upon which payment is
26 due, the commissioner may by order summarily suspend or revoke
27 the certificate issued to the company.

28 (B) If an escrow agent fails to pay the second installment
29 payment on or before September 30 in each year, the commissioner
30 may by order summarily suspend or revoke the certificate issued
31 to the company.

32 (C) If an escrow agent fails to pay the third installment payment
33 on or before December 31 in each year, the commissioner may by
34 order summarily suspend or revoke the certificate issued to the
35 company.

36 (D) If, after this order is made, a request for a hearing is filed
37 in writing and a hearing is not held within 60 days thereafter, the
38 order is deemed rescinded as of its effective date. During any
39 period when its certificate is revoked or suspended, a company
40 shall not conduct business pursuant to this division, except as may

1 be permitted by order of the commissioner. However, the
2 revocation, suspension, or surrender of a certificate shall not affect
3 the powers of the commissioner as provided in this division.

4 (f) Fifty dollars (\$50) for investigation services in connection
5 with each application for qualification of any person under Section
6 17200.8, other than investigation services under subdivision (c)
7 of this section.

8 (g) A fee not to exceed twenty-five dollars (\$25) for the filing
9 of a notice or report required by rules adopted pursuant to
10 subdivision (a) or Section 17203.1.

11 (h) This section shall become operative January 1, ~~2010~~ 2016.

12 SEC. 4. Section 17209 of the Financial Code is amended to
13 read:

14 17209. An application for a license as an escrow agent shall
15 be signed and verified by an authorized officer of the applicant,
16 and ~~such~~ *that* application shall be accompanied by a certified copy
17 of the articles of incorporation and a copy of the bylaws of the
18 proposed licensee. The application shall set forth:

19 (a) The names and addresses of the incorporators, directors, and
20 officers.

21 (b) An itemized statement of the estimated receipts and
22 expenditures of the proposed first year of operations.

23 (c) An audited financial statement ~~showing compliance with~~
24 ~~Section 17210.~~

25 (d) The name and address of the person, or persons, meeting
26 the requirements of Section 17200.8, and a statement supporting
27 ~~such~~ *those* persons' qualifications.

28 (e) The type of business for which the license is requested.

29 (f) Any other matters the commissioner may require.

30 (g) An application for a license as an escrow agent filed with
31 the commissioner shall also include a completed statement of
32 identity and questionnaire, as prescribed by the commissioner, for
33 all stockholders, directors, officers, trustees, managers, and other
34 persons participating in the escrow business directly or indirectly
35 compensated by the escrow agent (other than usual and customary
36 employees who file pursuant to subdivision (d) of Section 17414.1
37 and Section 17419) and shall also include fingerprints and related
38 information for those persons pursuant to subdivision (h). The
39 commissioner shall notify the applicant in writing if any of the
40 information received pursuant to this division shows that a person's

1 employment, participation, or ownership interest would be in
2 violation of Section 17414.1, and the escrow agent shall deny the
3 person the employment or interest. If the application is not
4 satisfactorily amended to remove the deficiency within six months
5 of the first notice of deficiency, the application shall be summarily
6 denied. Persons required to file the employment application
7 pursuant to Section 17419 are not required to file the statement of
8 identity and questionnaire described in this section.

9 (h) (1) The fingerprint images and related information shall be
10 submitted by the commissioner to the Department of Justice, in a
11 manner established by the Department of Justice, for the purposes
12 of obtaining information as to the existence and content of a record
13 of state or federal convictions, state or federal arrests, and
14 information as to the existence of and content of a record of state
15 or federal arrests for which the Department of Justice establishes
16 that the person is free on bail or on his or her own recognizance
17 pending trial or appeal.

18 (2) Upon receipt, the Department of Justice shall forward to the
19 Federal Bureau of Investigation requests for federal summary
20 criminal history information received from the commissioner
21 pursuant to this section. The Department of Justice shall review
22 the information returned from the Federal Bureau of Investigation
23 and compile and disseminate a response to the commissioner
24 pursuant to subdivision (p) of Section 11105 of the Penal Code.

25 (3) The commissioner shall request from the Department of
26 Justice subsequent arrest notification service as provided pursuant
27 to Section 11105.2 of the Penal Code.

28 (4) The Department of Justice shall charge a fee sufficient to
29 cover the costs of processing the requests pursuant to this
30 subdivision.

31 SEC. 5. Section 17210 of the Financial Code is repealed.

32 ~~17210. (a) An escrow agent licensed on or after January 1,~~
33 ~~1986, shall maintain at all times a tangible net worth of fifty~~
34 ~~thousand dollars (\$50,000), including liquid assets of at least~~
35 ~~twenty-five thousand dollars (\$25,000) in excess of current~~
36 ~~liabilities.~~

37 ~~(b) An escrow agent licensed prior to January 1, 1986, shall~~
38 ~~maintain at all times a tangible net worth according to the following~~
39 ~~schedule:~~

1 ~~(1) Ten thousand dollars (\$10,000) from January 1, 1986,~~
2 ~~through June 30, 1986, including liquid assets of at least ten~~
3 ~~thousand dollars (\$10,000) in excess of current liabilities.~~

4 ~~(2) Fifteen thousand dollars (\$15,000) as of July 1, 1986,~~
5 ~~including liquid assets of at least fifteen thousand dollars (\$15,000)~~
6 ~~in excess of current liabilities.~~

7 ~~(3) Twenty thousand dollars (\$20,000) as of July 1, 1987,~~
8 ~~including liquid assets of at least twenty thousand dollars (\$20,000)~~
9 ~~in excess of current liabilities.~~

10 ~~(4) Twenty-five thousand dollars (\$25,000) as of July 1, 1988,~~
11 ~~including liquid assets of at least twenty-five thousand dollars~~
12 ~~(\$25,000) in excess of current liabilities.~~

13 ~~(5) Thirty thousand dollars (\$30,000) as of July 1, 1989,~~
14 ~~including liquid assets of at least twenty-five thousand dollars~~
15 ~~(\$25,000) in excess of current liabilities.~~

16 ~~(6) Thirty-five thousand dollars (\$35,000) as of July 1, 1990,~~
17 ~~including liquid assets of at least twenty-five thousand dollars~~
18 ~~(\$25,000) in excess of current liabilities.~~

19 ~~(7) Forty thousand dollars (\$40,000) as of July 1, 1991,~~
20 ~~including liquid assets of at least twenty-five thousand dollars~~
21 ~~(\$25,000) in excess of current liabilities.~~

22 ~~(8) Forty-five thousand dollars (\$45,000) as of July 1, 1992,~~
23 ~~including liquid assets of at least twenty-five thousand dollars~~
24 ~~(\$25,000) in excess of current liabilities.~~

25 ~~(9) Fifty thousand dollars (\$50,000) as of July 1, 1993, and~~
26 ~~thereafter, including liquid assets of at least twenty-five thousand~~
27 ~~dollars (\$25,000) in excess of current liabilities.~~

28 ~~(e) The commissioner may determine by rule as to which assets~~
29 ~~constitute liquid assets and may also determine in an individual~~
30 ~~case by a specific written ruling whether a particular asset is a~~
31 ~~liquid asset within the meaning of this section.~~

32 ~~(d) In the case of a licensed branch office, a tangible net worth~~
33 ~~in addition to that required by subdivision (a) shall be maintained~~
34 ~~at an amount equal to 50 percent of the tangible net worth required~~
35 ~~by subdivision (a), except that licensees operating or applying for~~
36 ~~more than one branch office shall maintain an additional tangible~~
37 ~~net worth of at least 25 percent of the amount required by~~
38 ~~subdivision (a) for each branch office licensed after the first branch~~
39 ~~office location.~~

1 SEC. 6. Section 17323 of the Financial Code is amended to
2 read:

3 17323. (a) ~~In the event~~ *If* any member fails to pay an
4 assessment when due, Fidelity Corporation shall by written demand
5 addressed to the member request the payment of the assessment
6 within 30 days of the demand letter. If the member fails to pay an
7 assessment, the commissioner may issue an order pursuant to
8 subdivision (b).

9 (b) If a member fails to pay the assessment, or any applicable
10 late fee, the commissioner may by order summarily suspend the
11 license issued to the company. If after the order is made, a request
12 for a hearing is filed in writing and a hearing is not held within 60
13 days thereafter, the order is deemed rescinded as of its effective
14 date. During any period when its license is suspended, a company
15 shall not conduct business pursuant to this division, except as may
16 be permitted by order of the commissioner. However, the
17 suspension of a license shall not affect the powers of the
18 commissioner as provided in this division.

19 (c) Fidelity Corporation may bring an action at law or in equity
20 against the member to recover any assessment or fees.

21 (d) Fidelity Corporation may be awarded costs and reasonable
22 attorney's fees, if it prevails in any action against a member, or
23 against a third party, except the commissioner, to enforce a claim
24 against the bond or other security posted by the member pursuant
25 to Section 17202, or in any action against a member pursuant to
26 subdivision (c). Those costs and attorney's fees may be awarded
27 as an item of costs, as provided for in paragraph (10) of subdivision
28 (a) and paragraph (5) of subdivision (c) of Section 1033.5 of the
29 Code of Civil Procedure, provided that the payment of the costs
30 and attorney's fees will not cause the member to be in violation
31 of Section 17202; ~~or 17202.1; or 17210.~~

32 SEC. 7. Section 17405 of the Financial Code is amended to
33 read:

34 17405. (a) The business, accounts and records of every person
35 performing as an escrow agent, whether required to be licensed
36 under this division or not, are subject to inspection and examination
37 by the commissioner at any time without prior notice. The
38 provisions of this section shall not apply to persons specified in
39 Section 17006.

1 (b) Any person subject to this division shall, upon request,
2 exhibit and allow inspection and copying of any books and records
3 by the commissioner or his or her authorized representative.

4 (c) (1) The commissioner ~~shall~~ *may* conduct an examination
5 of each licensed escrow agent as described in subdivision (a) ~~as~~
6 ~~often as the commissioner deems necessary and appropriate, but~~
7 ~~not less than once every 48 months~~ *only for cause*.

8 (2) The examination shall be conducted for the 12-month period
9 immediately preceding the date that the examination is commenced
10 unless the commissioner finds, based on information uncovered
11 in the examination or in the most recent independent audit report,
12 that the examination should be extended beyond the 12-month
13 period.

14 (3) In determining ~~how often~~ *whether* an examination shall be
15 conducted *for cause*, the commissioner may consider each licensed
16 escrow agent's compliance with the requirements set forth in this
17 division and other factors the commissioner may by rule or order
18 designate.

19 (4) This subdivision shall apply only to examinations
20 commenced after the effective date established by the rule or order
21 of the commissioner for the factors described in paragraph (3).

22 (d) Notwithstanding subdivision (c), the commissioner ~~may~~
23 *shall* conduct an indoctrination or preliminary examination, or
24 both, under this section of any new licensee within one year of the
25 issuance of the license under this division, and an examination
26 described in subdivision (a) within two years of the issuance of
27 the license under this division.